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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
Policies and Rules  
Concerning Toll Fraud

CC Docket No. 93-292

JOINT REPLY COMMENTS OF WILTEL, INC.  
AND WILTEL COMMUNICATIONS SYSTEMS, INC.

WilTel, Inc. and WilTel Communications Systems, Inc. (collectively, "WilTel"), respectfully respond to the Comments filed in the above-captioned proceeding. WilTel, Inc. is an interexchange telecommunications common carrier. WilTel Communications Systems, Inc. is an affiliate of WilTel, Inc. which provides customer premises equipment and telecommunications software.

Market forces provide the best allocation of toll fraud liability and create incentives to effectively prevent and detect fraud.<sup>1</sup> As many commenters note, it would be a mistake

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<sup>1</sup>Comments of the Competitive Telecommunications Association (CompTel Comments) at 6; Comments of the Interexchange Carrier Industry Committee Toll Fraud Subcommittee (Toll Fraud Subcommittee Comments) at 6; Comments of Rochester Telephone Corporation (Rochester Comments) at 5-6; Comments of Southwestern Bell Corporation at 5-6; Comments of Sprint Corporation at 6; Comments of Teleport Communications Group, Inc. (Teleport Comments) at 6; Comments of U S WEST Communications, Inc. (U S WEST Comments) at 52; WilTel Comments at 5-7.

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for the Commission to make a predetermination of liability in this proceeding. Doing so would merely remove the incentive to take preventive action from those in the best position to prevent and detect the fraud.<sup>2</sup> For example, U S WEST's Comments provide a telling example of the disincentives created by shifting financial responsibility from the party most able to prevent fraud.<sup>3</sup> Because federal law limits customers' liability for calling card fraud to \$50, customers fail to take available precautions to prevent revealing their numbers to perpetrators.<sup>4</sup> The same would be true for PBX and other types of fraud if the parties most able to prevent the loss were not held financially responsible. Only where a party risks financial loss will it be encouraged to take measures to prevent fraud.

As the commenters assert, end users are best-positioned to detect and prevent fraud.<sup>5</sup> Customers have tremendous control over their communications systems.<sup>6</sup> As AT&T notes in

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<sup>2</sup>Comments of LinkUSA at 3.

<sup>3</sup>U S WEST Comments at 47.

<sup>4</sup>Id.

<sup>5</sup>AT&T Comments at 10; Comments of MCI Telecommunications Corporation at 6; NYNEX Comments at 17; Comments of Pacific Bell and Nevada Bell at 8; Southwestern Bell Comments at 3; Comments of Telecommunications Resellers Association at 5; Toll Fraud Subcommittee Comments at 6; U S WEST Comments at 37, 40, and Appendix D; WilTel Comments at 2-3.

<sup>6</sup>Policies and Rules Concerning Toll Fraud, Notice of Proposed Rulemaking, FCC 93-494, CC Docket No. 93-292, ¶ 3 (released Dec. 2. 1993).

its Comments, "[o]nly the customer knows the complete package of CPE products, features and associated software it has purchased, and only the customer has direct access to such equipment."<sup>7</sup> Further, only the customer can monitor all traffic and determine whether calls are fraudulent or authorized.<sup>8</sup> PBX owners are sophisticated telecommunications users<sup>9</sup> and reap the benefits of any risk-prone equipment they elect to use. Thus, it would be unreasonable to expect carriers or equipment providers (and, ultimately, all subscribers and end users) to shoulder the burden of fraud.

WilTel disagrees with the assertions of some commenters that carriers and equipment providers lack incentives to assist customers in combating fraud or warning customers of the risks of fraud.<sup>10</sup> On the contrary, both carriers and equipment providers have undertaken efforts to warn customers of the risks of toll fraud.<sup>11</sup> Further, the market has forced

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<sup>7</sup>AT&T's Comments at 11.

<sup>8</sup>Id.

<sup>9</sup>Teleport Comments at 5.

<sup>10</sup>Comments of Communications Managers Association, The New York Clearing House Association, and The Securities Industry Association at 4.

<sup>11</sup>Northern Telecom Comments at 6, Sprint Comments at 6 n.3; Teleport Comments at 6; WilTel Comments at 6-7.

carriers and equipment providers to offer services and products to prevent and detect fraud.<sup>12</sup>

As the commenters indicate, arbitrarily placing liability on carriers will merely shift the burden of fraud to all users and require residential customers to subsidize high-risk business users.<sup>13</sup> As one commenter states, "it is undesirable to shift PBX theft expenses to ratepayers in general, who are not in a position to mitigate PBX fraud risks."<sup>14</sup>

Customers are best able to detect and prevent fraud<sup>15</sup> and should be given the financial incentive to do so. Because

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<sup>12</sup>Rochester Telephone Comments at 6; Sprint Comments at 6; Toll Fraud Subcommittee Comments at 6-7; U S WEST Comments at 52; WilTel Comments at 6.

<sup>13</sup>CompTel Comments at 3; Southwestern Bell Comments at 4; WilTel Comments at 3-4.

<sup>14</sup>Toll Fraud Subcommittee Comments at 6.

<sup>15</sup>Customers can combat fraud by controlling access to CPE, by purchasing equipment that can detect or deter fraud, or by obtaining network services which either limit the potential for fraud or provide anti-fraud "insurance."

allocating toll fraud liability would undermine this incentive and lead to increased costs for all users, the Commission should refrain from altering market forces.

Respectfully submitted,

**WILTEL, INC. AND WILTEL  
COMMUNICATIONS SYSTEMS, INC.**

February 10, 1994

/s/ Shawna L. Barnard

---


Bob F. McCoy  
Joseph W. Miller  
Kevin L. Ward  
Shawna L. Barnard  
Their Attorneys

Service Address:

Shawna L. Barnard  
Suite 3600  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-2298

## CERTIFICATE OF SERVICE

I, Diana Neiman, hereby certify that copies of the foregoing "Joint Reply Comments of WilTel, Inc. and WilTel Communications Systems, Inc." regarding Policies and Rules Concerning Toll Fraud, CC Docket No. 93-292, were served by hand upon or by first-class United States mail, postage prepaid, upon the parties appearing on the attached service list February 10, 1994.

  
Diana Neiman

## SERVICE LIST

William F. Caton\*  
Acting Secretary  
Federal Communications  
Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Reed E. Hundt\*  
Chairman  
Federal Communications  
Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

James H. Quello\*  
Federal Communications  
Commission  
1919 M Street, N.W.  
Room 802  
Washington, D.C. 20554

Andrew C. Barrett\*  
Federal Communications  
Commission  
1919 M Street, N.W.  
Room 844  
Washington, D.C. 20550

Ervin S. Duggan\*  
Federal Communications  
Commission  
1919 M Street, N.W.  
Room 832  
Washington, D.C. 20554

ITS\*  
2100 M Street, N.W.  
Suite 140  
Washington, D.C. 20554

James P. Tuthill  
Nancy C. Woolf  
Attorneys for Pacific Bell  
and Nevada Bell  
140 New Montgomery Street  
Room 1523  
San Francisco, CA 94105

James L. Wurtz  
Attorney for Pacific Bell  
and Nevada Bell  
1275 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

James S. Blaszak  
Patrick J. Whittle  
Susan H.R. Jones  
Gardner, Carton & Douglas  
Attorneys for Ad Hoc  
Telecommunications Users  
Committee  
1301 K Street, N.W.  
Suite 900 East  
Washington, D.C. 20005

Albert H. Kramer  
Robert F. Aldrich  
Dana J. Lesemann  
Keck, Mahin & Cate  
Attorneys for American  
Public Communications  
Council  
1201 New York Avenue  
Penthouse Suite  
Washington, D.C. 20005-3919

Albert H. Kramer  
Robert F. Aldrich  
Keck, Mahin & Cate  
Attorneys for North American  
Telecommunications Ass'n  
1201 New York Avenue, N.W.  
Penthouse Suite  
Washington, D.C. 20005-3919

Wayne V. Black  
C. Douglas Jarrett  
Michael R. Bennet  
Keller and Heckman  
Attorneys for The American  
Petroleum Institute  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001

Debra L. Lagapa  
Levine, Lagapa & Block  
Attorneys for the  
Communications Managers  
Association, the New York  
Clearing House Ass'n, and  
the Securities Industry  
Association  
1200 Nineteenth Street, N.W.  
Suite 602  
Washington, D.C. 20036

Stephen L. Goodman  
Halprin, Temple & Goodman  
Attorney for Northern  
Telecom Inc.  
1301 K Street, N.W.  
Suite 1020, East Tower  
Washington, D.C. 20005

Robert Cook  
Chairman and Chief Executive  
Officer  
U.S. Intelco Networks, Inc.  
P.O. Box 2909  
Olympia, WA 98507

Michael J. Shortley, III  
Attorney for Rochester  
Telephone Corporation  
180 South Clinton Avenue  
Rochester, NY 14646

Mary J. Sisak  
Donald J. Elardo  
Attorneys for MCI  
Telecommunications  
Corporation  
1801 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

James D. Ellis  
William J. Free  
Paula J. Fulks  
Attorneys for Southwestern  
Bell Corporation  
175 East Houston, Room 1218  
San Antonio, TX 78205

Robert M. Lynch  
Richard C. Hartgrove  
Paul Walters  
Attorneys for Southwestern  
Bell Telephone Company  
One Bell Center, Room 3520  
St. Louis, MO 63101

Jay C. Keithley  
Michael B. Fingerhut  
Norina T. Moy  
Attorneys for Sprint  
Corporation  
1850 M Street, N.W.  
Suite 1110  
Washington, D.C. 20036

Craig T. Smith  
Attorney for Sprint  
Corporation  
P.O. Box 11315  
Kansas City, MO 64112

Mark C. Rosenblum  
Robert J. McKee  
Richard H. Rubin  
Attorneys for American  
Telephone and Telegraph  
Company  
Room 3254A2  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Steven J. Hogan, President  
LinkUSA Corporation  
230 Second Street S.E.  
Suite 400  
Cedar Rapids, IA 52401

J. Manning Lee  
Senior Regulatory Counsel  
Teleport Communications  
Group  
1 Teleport Drive, Suite 301  
Staten Island, NY 10311



Genevieve Morelli  
Vice President and General  
Counsel  
Competitive  
Telecommunications Ass'n  
1140 Connecticut Ave., N.W.  
Suite 220  
Washington, D.C. 20036

Edward R. Wholl  
William J. Balcerski  
Attorneys for NYNEX  
Corporation  
120 Bloomingdale Road  
White Plains, NY 10605

Charles C. Hunter  
Kelly, Hunter, Mow & Povich,  
P.C.  
Attorneys for  
Telecommunications  
Resellers Association  
1133 Connecticut Ave., N.W.  
Seventh Floor  
Washington, D.C. 20036

Brian R. Moir  
Attorney for International  
Communications Ass'n  
1255 23rd Street, N.W.  
Suite 800  
Washington, D.C. 20037-1170

David Cosson  
Attorney for National  
Telephone Cooperative  
Association  
2626 Pennsylvania Ave., N.W.  
Washington, D.C. 20037

John L. Bartlett  
Robert J. Butler  
Aliza F. Katz  
Wiley, Rein & Fielding  
Attorneys for Aeronautical  
Radio, Inc.  
1776 K Street, N.W.  
Washington, D.C. 20006

David C. Jatlow  
Young & Jatlow  
Attorney for The Ericsson  
Corporation  
2300 N Street, N.W.  
Suite 600  
Washington, D.C. 20037

John M. Goodman  
Stephen E. Bozzo  
Attorneys for Bell Atlantic  
1710 H Street, N.W.  
Washington, D.C. 20006

Douglas F. Brent  
Attorney for The  
Interexchange Carrier  
Industry Committee Toll  
Fraud Subcommittee  
9300 Shelbyville Road  
Suite 700  
Louisville, KY 40222

Kathryn Marie Krause  
Attorney for U S WEST  
Communications, Inc.  
Suite 700  
1020 19th Street, N.W.  
Washington, D.C. 20036

Joe D. Edge  
Elizabeth A. Marshall  
Hopkins & Sutter  
Attorneys for Puerto Rico  
Telephone Company  
888 Sixteenth Street, N.W.  
Washington, D.C. 20006

Anne U. MacClintock  
Vice President-Regulatory  
Affairs & Public Policy  
The Southern New England  
Telecommunications Corp.  
227 Church Street  
New Haven, CT 06510

M. Robert Sutherland  
Richard M. Sbaratta  
Helen A. Shockey  
675 West Peachtree St., N.E.  
Suite 1800  
Atlanta, GA 30367-6000

E. Lee Kaywork  
Corporate Vice President -  
Revenue Requirements  
Cathleen A. Massey  
Senior Regulatory Counsel  
McCaw Cellular  
Communications, Inc.  
1150 Connecticut Ave., N.W.  
Washington, D.C. 20036

R. Michael Senkowski  
Katherine M. Holden  
Wiley, Rein & Fielding  
Attorneys for McCaw Cellular  
Communications, Inc.  
1776 K Street, N.W.  
Washington, D.C. 20006

Raymond G. Bender, Jr.  
J.G. Harrington  
Dow, Lohnes & Albertson  
Attorneys for Vanguard  
Cellular Systems, Inc.  
1255 Twenty-third St., N.W.  
Suite 500  
Washington, D.C. 20037

Pamela J. Andrews  
Attorney for Ameritech  
Corporation  
Room 4H74  
2000 West Ameritech Ctr Dr.  
Hoffman Estates, IL 60196

Michael F. Altschul  
Cellular Telecommunications  
Industry Association  
1133 21 Street, N.W.  
Third Floor  
Washington, D.C. 20036

Dennis C. Linken  
Stryker, Tams & Dill  
Attorney for New Jersey  
Payphone Association  
Two Penn Plaza East  
Newark, NJ 07105

Raymond S. Heyman  
O'Connor, Cavanagh,  
Anderson, Westover,  
Killingsworth & Beshears,  
P.A.

Attorney for Arizona  
Payphone Association and  
Nevada Payphone Ass'n  
One East Camelback Road  
Suite 1100  
Phoenix, AR 85012-1656

Linda Kent  
Associate General Counsel  
United States Telephone  
Association  
1401 H Street, N.W.  
Suite 600  
Washington, D.C. 20005-2136

Kenneth A. Hoffman  
Floyd R. Self  
Messer, Vickers, Caparello,  
Madsen, Lewis, Goldman &  
Metz, P.A.  
Attorneys for Florida Pay  
Telephone Ass'n, Inc.  
P.O. Box 1876  
Tallahassee, FL 32302-1876

R. Michael Senkowski  
Jeffrey S. Linder  
Wiley, Rein & Fielding  
Attorneys for  
Tele-Communications Ass'n  
1776 K Street, N.W.  
Washington, D.C. 20006

Jeffrey L. Sheldon, General  
Counsel  
Sean A. Stokes, Staff  
Attorney  
Utilities Telecommunications  
Council  
1140 Connecticut Ave., N.W.  
Suite 1140  
Washington, D.C. 20036

Keith J. Roland  
Roland, Fogel, Koblenz &  
Carr  
Attorneys for the  
Independent Payphone  
Ass'n of New York, Inc.  
One Columbia Place  
Albany, NY 12207

John E. Balliew, P.E.  
Environmental Compliance  
Manager  
El Paso Water Utilities  
Public Service Board  
1154 Hawkins Boulevard  
El Paso, TX 79925

William E. Wyrrough, Jr.  
Associate General Counsel  
Florida Public Service  
Commission  
101 East Gaines Street  
Tallahassee, FL 32399

John J. O'Brien, P.E.  
O'Brien Engineering, P.C.  
220 Maple Avenue, Suite 205  
Rockville Centre, NY 11570

Fred E. Marquis  
County Administrator  
Pinellas County, Florida  
315 Court Street  
Clearwater, FL 34616

John A. Anderson  
Melyssa D. Davidson  
Van Cott, Bagley, Cornwall &  
McCarthy  
Attorneys for Leucadia  
National Corporation and  
American Investment  
Suite 1600  
50 South Main Street  
Salt Lake City, UT 84144

Eliot J. Greenwald  
Julie Arthur Garcia  
Fisher, Wayland, Cooper and  
Leader  
Attorneys for Quantum Logic,  
Inc.  
1255 23rd Street, N.W.  
Suite 800  
Washington, D.C. 20037

Deborah K. Augerstein  
Telecommunications Manager  
The Greeley Medical Clinic,  
P.C.  
1900 16th Street  
Greeley, CO 80631

Colleen M. Fox  
The GreenPoint Savings Bank  
41-60 Main Street  
Flushing, NY 11355-3820

Linda S. Gibson  
Communications Coordinator  
One Indiana Square  
Suite 3400  
Indianapolis, IN 46204-2094

Gail Mayerchak  
Telecommunications  
Coordinator  
Liberty Diversified  
Industries  
5600 North Highway 169  
Minneapolis, MN 55428

Kyle Wickemeyer-Hardy  
Supervisor of the Voice  
Network  
Indiana University  
Education Technology  
Services  
W.W. Wright Education Bldg  
Bloomington, IN 47405-1006

Rosemary Staples  
Regional Telecommunication  
Systems Administrator  
AmSouth Bank of Florida  
P.O. Box 12790  
Pensacola, FL 32575-2790

Nance R. West  
Telecommunications  
Supervisor  
OBICI Hospital  
1900 North Main Street  
Suffolk, VA 23439-1100

Kitty J. Leemon  
Supervisor of  
Telecommunications  
University Microfilms  
International  
A Bell & Howell Information  
Company  
300 North Zeeb Road  
Ann Arbor, MI 48106-1346

Raymond J. Dzek  
Operations Supervisor  
Specialized Bicycle  
Components  
15130 Concord Circle  
Morgan Hill, CA 95037

Susan M. Green  
Technical Analyst  
AgriBank  
375 Jackson Street  
Box 64949  
St. Paul, MN 55164-0949

Michael R. Oliver  
Telecommunications Manager  
The Mid-America Group  
Regency West 4  
4700 Westown Parkway  
Suite 303  
West Des Moines, IA 50266

Thomas A. Rogers, P.E.  
Communications Engineer  
Kansas Turnpike Authority  
9401 East Kellogg  
Wichita, KS 67207-1804

Thomas Logue  
Telecommunications Manager  
Pennock  
3027 Stokley Street  
Philadelphia, PA 19129-1188

Cathleen M. Mulrooney  
Senior Telecommunications  
Specialist  
HIMONT USA, Inc.  
Three Little Falls Centre  
2801 Centerville Road  
P.O. Box 15439  
Wilmington, DE 19850-5439

Mary L. Dewey  
Northrup King Company  
7500 Olson Memorial Highway  
Golden Valley, MN 55427

Richard K. Bernard  
General Counsel  
Metro-North Commuter  
Railroad  
347 Madison Avenue  
New York, NY 10017

Donna M. Fugate  
Telecommunications Manager  
United Fire & Casualty  
Company and United Life  
Insurance Company  
118 Second Avenue, S.E.  
Cedar Rapids, IA 52407

Anne M. Cosmai  
Telecommunications Manager  
Milbank, Tweed, Hadley &  
McCloy  
1 Chase Manhattan Plaza  
New York, NY 10005-1413

Sandy Till  
Telecommunications Manager  
Wm. C. Brown Communications,  
Inc.  
2460 Kerper Boulevard  
Dubuque, IA 52001

J. Farrington  
B H K & R, Inc.  
300 Olympic Place  
7825 Washington Avenue South  
Minneapolis, MN 55439-2433

Brian P. Garavuso  
Director of Corporate  
Services  
South Seas Resorts Company  
12800 University Drive  
Suite 350  
Fort Myers, FL 33907

Helen Bryan  
H.B. Zachry Company  
P.O. Box 21130  
San Antonio, TX 78221-0130

Anthony Guarisco, Jr.  
Director of Communications  
Thomas Hospital  
750 Morphy Avenue  
Fairhope, AL 36533

Donald Giardino  
Manager -- Facility Services  
Keystone Investor Resource  
Center, Inc.  
101 Main Street  
Cambridge, MA 02142-1519

Don Eisenbarth  
Technical Services Manager  
West Georgia Medical Center  
1514 Vernon Road  
LaGrange, GA 30240

Renee' A. Seay, President  
Global DEFINITY Users Group  
Advanced Micro Devices  
901 Thompson Place MS10  
Sunnyvale, CA 94088

Facility Operations Group  
2730 South Hardy Drive  
Suite 1  
Tempe, AR 85282

Westvaco  
Envelope Division  
2001 Roosevelt Avenue  
Box 3300  
Springfield, MA 01101-3300

Mara O. Gibbs  
Manager, Computer &  
Telecommunication  
Services  
The Wilkerson Group, Inc.  
666 Third Avenue  
New York, NY 10017-4011

Sally York, Manager  
Communication Systems  
USL Capital  
733 Front Street  
San Francisco, CA 94111

Caryl Meeks  
Telecommunications Manager  
M.D. Health Plan  
6 Devine Street  
North Haven, CT 06473-2174

Sharon W. Garver  
Manager, Voice/Video  
Telecommunications  
LEGENT Corporation  
7965 North High Street  
Columbus, OH 43235

Mary Lou Zecker  
Director of Communications  
Delaware Valley Medical  
Center  
200 Oxford Valley Road  
Langhorne, PA 19047

Thomas J. Dunleavy, Deputy  
Commissioner  
Susan Miller, Policy Analyst  
New York City Department of  
Telecommunications and  
Energy  
75 Park Place  
New York, NY 10007

Stephen Satchell  
P.O. Box 6900  
Incline Village, NV 89450

Ed Simonson, Owner, Vice  
President  
Ken Kumasawa,  
Sales/Marketing  
TeleDesign MANAGEMENT  
1633 Bayshore Highway  
Suite 120  
Burlingame, CA 94010

Denise M. Munro  
Senior Systems Consultant  
Diana Tipton  
Systems Consultant II  
Doug Clark  
Senior Analyst-Voice Network  
Halliburton Company  
5000 South Bowen Road  
Arlington, TX 76017

Keith Frank, President  
National Definity Users  
Group, Inc.  
The University of Oklahoma  
College of Medicine  
2808 South Sheridan Road  
Tulsa, OK 74129

J.B. Hurt  
Telecommunications  
Specialist  
Bessemer and Lake Erie  
Railroad Company  
135 Jamison Lane  
Monroeville, PA 15146

Thomas K. Crowe  
Michael G. Jones  
Irwin Campbell & Crowe  
Attorneys for Planned  
Parenthood of New York  
City, and Reynolds and  
Reynolds  
1320 18th Street, N.W.  
Suite 400  
Washington, D.C. 20036

Gerald F. Grogett  
Telecommunications Manager  
Brunschwig & Fils  
75 Virginia Road  
North White Plains, NY 10603

Joel H. Levy  
Cohn and Marks  
Attorney for National  
Cellular Resellers Ass'n  
1333 New Hampshire Avenue,  
N.W.  
Suite 600  
Washington, D.C. 20036

Benjamin J. Griffin  
Laura Holt Jones  
Reed Smith Shaw & McClay  
Attorneys for the Office of  
Information Resources  
1200 18th Street, N.W.  
Washington, D.C. 20036

J. Ethan Jacobs  
Attorney for FMC Corporation  
200 East Randolph Drive  
Chicago, IL 60601

Alfred Winchell Whittaker  
Kirkland & Ellis  
Attorneys for FMC  
Corporation  
655 Fifteenth Street, N.W.  
Suite 1200  
Washington, D.C. 20005

Commonwealth of Pennsylvania  
Pennsylvania Public Utility  
Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

\* Hand Delivered 2-10-94